

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

Richard Keith Pope, #259297,)	
)	No. 9:14-cv-2909-RMG
Petitioner,)	
)	ORDER
vs.)	
)	
Warden, Evans Correctional Institution,)	
)	
Respondent.)	
_____)	

This matter comes before the Court on the Report and Recommendation (“R & R”) of the Magistrate Judge (Dkt. No. 18), recommending that Respondent’s motion for summary judgment be granted because Petitioner has not exhausted his state remedies as required under 28 U.S.C. § 2254(b). The Magistrate Judge recommended that the dismissal be without prejudice. Petitioner has filed objections to the R & R, arguing that he should not have to wait for a final decision of the South Carolina Supreme Court to pursue his federal habeas remedy because allegedly ineffective counsel deprived him the right to raise claims on direct appeal. (Dkt. No. 20).

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). This Court is charged with making a de novo determination of those portions of the R & R to which objection is made. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting 28 U.S.C. § 636(b)(1)); accord Fed. R. Civ. P. 72(b).

The Court has reviewed the parties' filings and the R & R, and concludes that the Magistrate Judge correctly applied the relevant law to the operative facts in this matter. The Petitioner is required under the present circumstances to exhaust all state court remedies before filing his federal habeas petition. Therefore, the Court **ADOPTS** in full the Magistrate Judge's Report and Recommendation (Dkt. No. 18) as the order of this Court. Accordingly, Respondent's Motion for Summary Judgment (Dkt. No. 17) is **GRANTED**. Petitioner's habeas petitions is **DISMISSED** without prejudice.

Certificate of Appealability

The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies the standard by demonstrating that reasonable jurists would find this Court's assessment of his constitutional claims debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is **DENIED**.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'RM Gergel', written over a horizontal line.

Richard Mark Gergel
United States District Judge

January 16 2015
Charleston, South Carolina